

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#5

Application of

Applicant(s) : Rudeck et al.

Serial No. : 10/072,015

Confirm. No. : 2571

Filed : February 7, 2002

Title : MODIFIED SOURCE//DRAIN RE-OXIDATION METHOD AND SYSTEM

Docket : MIO 0053 VA

Art Unit : 2812



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Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on June 27, 2002.

William A. Jividen

Reg. No. 42,695

Sir:

Request for Reconsideration of Petition Under 37 CFR 1.47(a)

This paper is being filed in response to the Decision Refusing Status under 37 CFR 1.47(a), in Paper No. 4, mailed June 19, 2002, and having a response date of August 19, 2002. Applicants hereby address the deficiencies noted in Paper No. 4 by submitting herewith proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, along with the required petition fee.

In particular, a copy of the cover letter transmitting the application papers to the non-signing inventor is provided, along with a copy of the return to sender marking from the U.S. Postal Service due to the last given address by Francis Benistant to the assignee being unknown. A recent search performed via the Internet still failed to provide a mailing address for Francis Benistant. Copies of those Internet search results are also provided.

Respectfully submitted,

KILLWORTH, GOTTMAN, HAGAN  
& SCHAEFF, L.L.P.

07/09/2002 AWONDAF1 00000010 10072015

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130.00 0P

By

William A. Jividen

Registration No. 42,695

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One South Main Street, Suite 500  
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# FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 130.00

## Complete if Known

Application Number 10/072,015  
Filing Date February 7, 2002  
First Named Inventor Paul J. Rudeck  
Examiner Name  
Group Art Unit 2812  
Attorney Docket No. MIO 0053 VA

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## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit  
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Account  
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The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments

☐ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) (\$) -0-

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** =	X	
Claims	-3** =	X	
Multiple Dependent			

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	84	202	42	Independent claims in excess of 3
104	280	204	140	Multiple dependent claim, if not paid
109	84	209	42	** Reissue independent claims over original patent
110	18	210	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) -0-

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

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### 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify) Petition Fee

130.00

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

## SUBMITTED BY

Name (Print/Type) William A. Jividen

Registration No. 42,695  
(Attorney/Agent)

Complete (if applicable)

Telephone (937) 223-2050

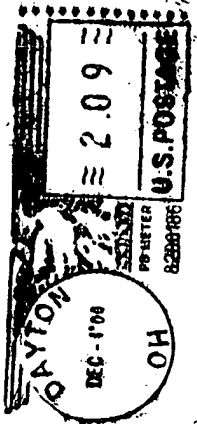
Signature

Date June 27, 2002

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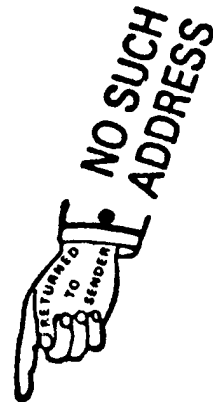
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Killworth, Gottman, Hagan & Schaeff, LLP

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FRANCIS BENISTANT  
4555 THORNTON AVENUE #76  
BOISE ID 94536

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E-mail | [hghs@kghs.com](mailto:hghs@kghs.com)

November 22, 2000

Francis Benistant  
4555 Thornton Avenue  
Boise, ID 94536

Re: U.S. Patent Application entitled MODIFIED SOURCE/DRAIN REOXIDATION  
METHOD AND SYSTEM  
Our Docket MIO 0053 PA; Micron's Ref. No. 98-0110

Dear Mr. Benistant:

We understand that you are no longer an employee of Micron Technology, Inc. in which you are named as the second inventor in the above-identified application. Being an inventor, you have the obligation to sign the necessary documents for filing the application with the United States Patent Office.

Enclosed is the application, drawings and formal papers for your review. Please line through on the Declaration the address typed beneath your name and handwrite the correct address along with your initials indicating the change. Also, please note that the assignment should be notarized.

After reviewing the above-mentioned documents, please sign and date them where indicated and return them to us in the enclosed return self-addressed envelope so that we can proceed with filing.

Please feel free to call me if you have any questions regarding this matter.

Yours truly,

Timothy W. Hagan  
[hagant@kghs.com](mailto:hagant@kghs.com)

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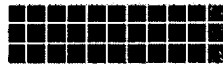
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Paper No. 4

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Dayton, OH 45402-2023

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In re Application of  
Paul J. Rudeck et al.  
Application No. 10/072,015  
Filed: February 7, 2002  
Attorney Docket No. MIO 0053 VA

:  
:  
: DECISION REFUSING STATUS  
: UNDER 37 CFR 1.47(a)  
:

This is in response to the petition filed under 37 CFR 1.47(a)<sup>1</sup> on February 7, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on February 7, 2002 with a declaration naming Paul J. Rudeck, Francis Benistant and Kelly Hurley as joint inventors and signed only by joint inventors Rudeck and Hurley but not by joint inventor Benistant. The present petition was also filed, in which petitioners assert that "efforts to contact joint inventor Benistant to execute the papers required for filing this patent application by first-class mail at his last known address have been unsuccessful."

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

<sup>1</sup>A petition under 37 CFR 1.47(b) is inappropriate in this instance since one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) and (3). In regards to item (1), petitioners have not submitted sufficient evidence to prove that a copy of the application was sent or given to the non-signing inventor. Petitioners must show proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) were sent or given to the non-signing inventor for review.<sup>2</sup> Petitioners should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Petitioners must also present proof that the non-signing inventor refuses to sign the declaration. If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (3), while the petition indicates that a check was enclosed in the amount of \$130.00 for payment of the fee required by 37 CFR 1.17( i), no such payment is found in this application file.

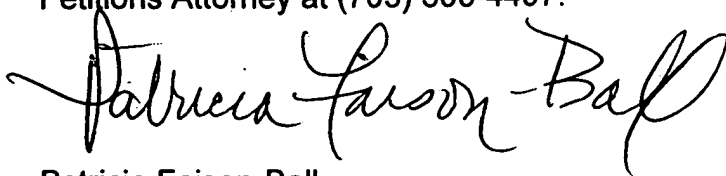
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup>MPEP 409.03(d).

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